

UNITED STATES ENVIRONMENTAL PROTECTION AGENCY

DATE: January 18, 1979

SUBJECT: Memo to File

FROM: James E. Stiebing, Chief
Engineering and Evaluation Branch (6AEE)

TO: File No. TX0004910

Jim Collins asked that I go with him to a meeting in Ray Lozano's office. Lozano had notified Jim that he was about to forward a memo prepared by Hathaway which recommended placing the McGinnis permit on the majors list. Those in attendance were:

Ray Lozano
Jim Collins
Bill Hathaway
Dick Hill (joined late)
Bruce Elliott (joined late)

Hathaway opened the meeting by saying it was his opinion that a problem existed with the McGinnis discharge. He was not specific and did not produce any facts or summary of facts on which he based his conclusions. Bill did cite conversations he had with Dave Peters and Gene Rozacky but did not give the specifics of the conversation.

The controversy surrounding the permit was cited as a basis ~~for putting it~~ for putting it on the majors list. We explained that we routinely handle controversial minor permits without placing them on the majors lists. Placement on the majors list, we explained, involved a lot of recordkeeping reporting, etc., that should not be necessary at this point. If, at some point, as a result of available evidence we find the kinds of impacts to surface water alleged that might serve as a basis for placing it on the listing.

The following are allegations which Hathaway made:

1. Based on his observations, the McGinnis discharge is adversely affecting the Intercoastal Canal.
2. Infrared photography has revealed an impact on the Intercoastal Canal.
3. The sludge contains phosvel (Yantis letter) and heavy metals in quantities which could result in unacceptably high levels of discharge.
4. Champion Paper's discharge contains exotic compounds in significant quantities and these compounds can be found in significant levels in the sludge.

Hathaway asked if we had jurisdiction over the pollutants which are seeping into the ground and entering the intercoastal canal by other than point source means. We told him no, that the jurisdiction for this was to be found in the SDWA and RCRA. Recent opinions on this were discussed.

Also discussed was flood protection (hurricanes in this case). We stated that minimum levee heights for protection were required on the basis of COE studies.

Jim Collins committed us to treat this as if it were a major without putting it on the majors list. This will involve a more detailed review of the proposed NPDES permit and rationale drafted by the TDWR.

Several things about this meeting are of concern to me. They are:

1. Most of the "problems" with this permit are based on the alleged toxic and/or hazardous properties of the sludge, not on the toxic and/or hazardous pollutants in the discharge. This appears to fall within the jurisdiction of RCRA and not NPDES.
2. Much of the alleged discharge of concern is believe to be nonpoint source and not subject to NPDES jurisdiction.
3. Although a number of obvious RCRA and possible SDWA violations and/or issues were alleged, the Air and Hazardous Materials Division is doing nothing about them within their own programs.
4. Air and Hazardous Materials Division was not willing to discuss RCRA jurisdiction during the meeting and did not appear to be willing to assume a responsible role in determining if RCRA jurisdiction existed or what safeguards are required at the McGinnis site.
5. EPA is not proposing to issue a permit at this point but the Air and Hazardous Materials Division is proposing that we in some way are obligated to stop or change the TDWR permit before it issues. If we are to have any impact at all on the state permit, Hathaway needs to meet with them

Hathaway did agree to let us review his file on McGinnis. This may reveal what development work he and S & A have in progress. We were unable to get any facts from him during the meeting.

cc: Jim Collins (6AE)
Bruce Elliott (6AEP)
John Fairall (6AEENME)
Gerald Fontenot (6AEENME)
6AEE File